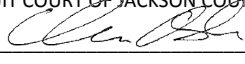


IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

FILED
DIVISION 10

05-Oct-2021 13:58

CIRCUIT COURT OF JACKSON COUNTY, MO

BY 

STATE OF MISSOURI ex rel. BOARD OF)
POLICE COMMISSIONERS OF KANSAS)
CITY, MISSOURI, *et al.*,)

Relators and Plaintiffs,)

v.)

MAYOR QUINTON LUCAS, *et al.*,)

Respondents and Defendants.)

Case No. 2116-CV11556

Division 10

JUDGMENT AND WRIT OF MANDAMUS¹

Relator and Plaintiff Kansas City Board of Police Commissioners (the “Board”)² filed this action, seeking a writ of mandamus against Respondents and Defendants (the “City”).³ On May 28, 2021, the Court issued a preliminary order in mandamus. The parties thereafter fully briefed the issues and the Court heard evidence and argument at a hearing on September 1, 2021. Being

¹ The sole legal issue presented to this Court in the present case is whether the City’s passage of Ordinances 210466 and 210468 violated Chapter 84; however, this matter should be further defined by a brief recognition of all that is not pending before this Court. This judgment is not a determination of the values of “defunding the police”. This judgment does not resolve whether citizens of Kansas City should exert direct political control over their law enforcement agency. It is not a referendum on the Chief of Police, the Mayor, or any other appointed or elected official. These are subjects of vigorous social debate and should be finally resolved by a healthy democracy. However, they are not legal issues pending before this Court.

² The Board acts in this matter through a majority of its members, Cathy Dean, Mark Tolbert, and Don Wagner, who serve as Relators and Plaintiffs in their official capacities and who are authorized to bring this action in the name of the State of Missouri pursuant to RSMo. § 84.860.

³ Respondent and Defendant Quinton Lucas (the “Mayor”) is the Mayor of Kansas City, Missouri, named in the matter in his official capacity. Respondent and Defendant Brian Platt (the “City Manager”) is the City Manager for Kansas City, Missouri, named in the matter in his official capacity. Respondent and Defendant Tammy Queen (the “Director of Finance”) is the Director of Finance for Kansas City, Missouri, named in the matter in her official capacity. Respondents and Defendants Heather Hall, Kevin O’Neill, Teresa Loar, Dan Fowler, Brandon Ellington, Melissa Robinson, Katheryn Shields, Eric Bunch, Lee Barnes, Jr., Ryana Parks-Shaw, Andrea Bough, and Kevin McManus (the “City Council”) are members of the City Council for Kansas City, Missouri, named in their official capacities. Respondent and Defendant the City of Kansas City, Missouri (the “City”) is a constitutional charter city of the State of Missouri situated in Jackson, Clay, Platte, and Cass counties.

duly advised in the premises, the Court makes the following findings of fact and conclusions of law:

Findings of Fact⁴

KCPD FISCAL YEAR 2021-22 BUDGET

1. Pursuant to RSMo. §§ 84.350 et seq., the Board is granted exclusive management and control of the Kansas City Police Department (“KCPD”).
2. The KCPD and City fiscal year starts May 1 and ends on April 30 of the following calendar year.
3. On or about October 27, 2020, the Board approved the KCPD’s budget request to the City for Fiscal Year 2021-22 by a 4-0 vote, with the Mayor abstaining.
4. The KCPD’s budget request asked for \$232,526,404 in appropriations from the City’s general revenue fund.

CITY FISCAL YEAR 2021-22 BUDGET AND APPROPRIATIONS

5. On or about March 25, 2021, in the Committee Substitute for Ordinance No. 210159, the City adopted its Annual Budget for Fiscal Year 2021-22 in which the City appropriated \$223,987,546 from the City’s general revenue fund to the KCPD.⁵

⁴ The parties stipulated to the admission of Exhibits 1 through 20. The City offered, and the Court admitted, Exhibits 101 through 106 over the Board’s objection. Those documents are a part of the record. All references to a Stipulation or a “Stip.” are to the parties’ *Joint Stipulation of Facts*, as amended at the hearing on September 1, 2021.

⁵ Respondents and Defendants contend the City’s March 25, 2021 appropriation to the KCPD constituted more than 25.8% of the City’s budgeted general revenue for Fiscal Year 2021-2022. The Board does not challenge this contention in these proceedings.

6. On or about April 27, 2021, the Board adopted the KCPD's budget for Fiscal Year 2021-22 based on the City's adopted appropriation, recognizing \$223,987,546 in appropriations from the City's general revenue fund.⁶

7. At the September 1, 2021 hearing, Relator/Plaintiff Cathy Dean, a member of the Kansas City Board of Police Commissioners, testified that the City can and does exercise its authority to evaluate and respond to the Board's budget request between the time the Board certifies its proposed budget and the time the City issues its appropriation to the Board. Commissioner Dean testified that, as it did for fiscal year 2021-22, the City typically appropriates an amount less than the Board requests.

CITY ORDINANCE NOS. 210466 AND 210468

8. On or about May 20, 2021, the City Council passed City Ordinances 210466 and 210468.

9. City Ordinance 210466 reduced the City's Fiscal Year 2021-22 appropriation to the KCPD by \$42,282,444.⁷

10. Section 2 of Ordinance 210466 provides, in part: "That the intent of the Council in reducing the accounts listed in Section 1 of this Ordinance is to reduce the Annual Police Budget" and that the "Council invites the Board to submit a revised budget should it desire to see reallocation or transfer of its remaining appropriation."

11. Section 1 of Ordinance 210466 reduced the following accounts by the amounts identified below:

⁶ The parties' joint stipulation of fact included, in error, the number "\$232,987,546." Pursuant to the parties' agreement at the hearing, the Court here uses "\$223,987,546."

⁷ Respondents and Defendants contend that, after passage of Ordinance 210466, the City's Fiscal Year 2021-22 appropriation to the KCPD is approximately 20.03% of the City's budgeted general revenues. The Board does not challenge this contention in these proceedings.

KCPDU-22-1000-211005-B	Office of Community Complaints	\$ 6,992.00
KCPDU-22-1000-211010-B	Office of Police Chief	639,652.00
KCPDU-22-1000-211015-B	Risk Management	8,769,568.00
KCPDU-22-1000-211016-B	Homeland Security Division	230,000.00
KCPDU-22-1000-211050-B	Purchasing	1,781,884.00
KCPDU-22-1000-211050-C	Purchasing	1,802,626.00
KCPDU-22-1000-211072-C	Building Operations	200,000.00
KCPDU-22-1000-211072-B	Building Operations	1,670,203.00
KCPDU-22-1000-211072-B	Fleet Operations	249,603.00
KCPDU-22-1000-211072-C	Fleet Operations	1,415,293.00
KCPDU-22-1000-211224-C	Communications Support Unit	362,912.00
KCPDU-22-1000-211224-B	Communications Support Unit	937,019.00
KCPDU-22-1000-211460-C	Human Resource Division	15,000.00
KCPDU-22-1000-211460-B	Human Resource Division	490,000.00
KCPDU-22-1000-211460-B	Patrol Bureau Office	267,750.00
KCPDU-22-1000-212593-B	Helicopter Unit	272,513.00
KCPDU-22-1000-212593-C	Helicopter Unit	331,800.00
KCPDU-22-1000-212610-B	Investigations Bureau Office	18,000.00
KCPDU-22-1000-212683-B	Crime Lab	392,950.00
KCPDU-22-1000-212683-C	Crime Lab	443,700.00
KCPDU-22-1000-212530-A	Metro Patrol Division	8,263,975.00
KCPDU-22-1000-212520-A	Central Patrol Division	9,701,137.00
KCPDU-22-1000-212540-A	East Patrol Division	4,019,867.00
	TOTAL	\$42,282,444.00

12. The City transferred the monies in those City accounts to a new account titled “Community Services and Prevention”.

13. Tammy Queen, the City’s Director of Finance, testified at the hearing that Ordinance 210466 removes from the Board’s requisitioning authority the monies identified in Section 1 and places such monies under the requisitioning authority of the City Manager.

14. Pursuant to Ordinance 210468, the City Manager is authorized to make those funds available to the KCPD to provide for certain police community engagement, outreach, prevention, intervention and other public services, including as necessary providing for an additional recruiting class to facilitate the provision of community services.

15. Pursuant to Ordinance 210468, the City Manager is authorized to negotiate and execute an agreement with the Board not to exceed an additional \$45,282,444 for these negotiated community engagement services.

16. Ordinances 210466 and 210468 do not require the City Manager to make those funds available to the Board unless the Board enters into an agreement that the City Manager deems consistent with the “community engagement services” set out in Ordinance 210468.

THE EFFECT ON THE POLICE DEPARTMENT’S OPERATIONS

17. Kristine Reiter, the Manager of KCPD’s Budget Unit, testified that, if Ordinances 210466 and 210468 go into effect as passed and the KCPD continues to spend funds per the Board’s approved budget, the Board will run out funds to operate the KCPD by December 2021 or January 2022.

18. Tammy Queen testified that if Ordinances 210466 and 210468 go into effect as passed and the KCPD continues to spend funds per the Board’s approved budget, the Board will run out funds to operate the KCPD by February 2022. Ms. Queen testified this will occur because the approximately \$42 million that was initially appropriated to the Board is now in an account under the City Manager’s requisitioning authority, to be spent on community services and prevention.

19. It is thus uncontroverted that, if Ordinances 210466 and 210468 go into effect as passed and the KCPD continues to spend funds per the Board’s approved budget, the Board will run out funds for KCPD’s operations before the end of fiscal year 2021-22.

PRIOR COURSE OF DEALING BETWEEN THE BOARD AND THE CITY

20. Pursuant to Missouri Constitution Art. VI, § 16 and RSMo. § 70.220, the City and the Board have from time to time entered into contracts for a common service. An example is the

April 22, 2018, Memorandum of Understanding for parking services which appropriates monies for parking control activities for the salary, benefits, agreed upon vehicles, and agreed upon associated equipment for ten full time employees.

21. The parties stipulated to the admission of thousands of pages of documents related to previous ordinances purporting to increase or decrease the Board's budget after the Board adopted its budget for a given fiscal year, and the Board's subsequent board minutes approving such increases or decreases. *See* Stips. 20 through 23. Ms. Reiter testified that it was part of her responsibilities to ensure that the Board voted on each increase or decrease and that the Board has always approved any such increase or decrease.

22. As both Tammy Queen and Commissioner Dean testified, members of the Board's budget unit and the City budget unit typically communicate prior to Board consideration regarding any changes the City proposes to the Board's budget to determine the feasibility of the change. However, Ms. Queen testified that no such meeting occurred between the Board's budget unit and the City's budget unit before the City Council passed Ordinance Nos. 210466 and 210468.

Conclusions of Law

For the reasons stated below, this Court finds that the City violated, and more specifically Ordinances 210466 and 210468 violate, Chapter 84.⁸

I. Standard of Review

This is an original proceeding in mandamus. "The remedy of a writ of mandamus is only appropriate where a party has a clear duty to perform a certain act." *State ex rel. Vescovo v. Clay Cty.*, 589 S.W.3d 575, 583 (Mo. Ct. App. 2019). "A litigant asking relief by mandamus must allege and prove that he has a clear, unequivocal, specific right to a thing claimed." *Id.* "Whether a

⁸ All references to "Chapter 84" are to Missouri Revised Statute § 84.350, *et seq.*

petitioner's right to mandamus is clearly established and presently existing is determined by examining the statute or ordinance under which petitioner claims the right." *Id.*

II. The City Violated Chapter 84.

"The proper maintenance of an adequate police system in Kansas City is a matter of state concern," *State ex rel. Spink v. Kemp*, 283 S.W.2d 502, 522 (Mo. Banc 1955), and the "Kansas City police system" is "an agency of the state." *Id.* at 514. To that end, "[t]he fiscal affairs of a municipality such as Kansas City are subject to such legislative control as is necessary to the proper enforcement of matters of general state concern." *Id.* at 522. "The law establishing the police commissioners of Kansas City and the system of police under them is an evidence of the policy of the state with reference to the police of one of its principal cities and it cannot be subverted by a local charter." *Id.* at 515.

Chapter 84 grants the Board "exclusive management and control" of the Kansas City Police Department. RSMo. § 84.460. As part of its management of the Kansas City Police Department, the Board must certify to the City, not later than the "fifteenth day of January each year," a proposed budget and "the budget shall itemize purposes of expenditure by organization units, activities, functions, and character classes in not less detail than 'personal services', 'contractual services', 'commodities', and 'capital outlays'[".] RSMo. § 84.730. The budget must estimate "the sum of money which will be necessary for the next fiscal year" and the City is "required to appropriate the total amount so certified . . . except that in no event shall the [City] be required to appropriate for the use of the police board in any fiscal year an amount in excess of one-fifth of the general revenue fund of such year." *Id.*

"[T]he power of said mayor and common council or municipal assembly to appropriate and disburse money for the payment of the police force organized and employed under sections

84.350 to 84.860 shall be exercised as in these sections directed and not otherwise.” RSMo. § 84.770. The “function of Kansas City as to the Police Department is limited to the yearly approval of its budget[.]” *Hasenyager v. Bd. of Police Comm'rs of Kansas City*, 606 S.W.2d 468, 472 (Mo. Ct. App. 1980).

“Out of the amount of money appropriated” by the City “to meet the expense of the police department for the ensuing fiscal year,” the Board must, “on or before May first of each year, adopt a budget for the police department for the ensuing fiscal year.” RSMo. § 84.740. The adopted budget must itemize the expenditures by character classes in no less detail than that required in the proposed budget. *Id.* “Such budget, when adopted and certified by the board, shall be the authorization of expenditures for the purposes set forth therein.” *Id.* “No transfer from one character classification of expenditure in the board budget to another character classification shall be made without the approval of said board.” *Id.*

The undisputed evidence established that: (1) Board timely proposed a properly itemized budget; (2) the City timely issued its appropriation before May of the fiscal year; and (3) the Board timely adopted its budget for fiscal year 2021-22 out of the City’s appropriation. The sole legal question before the Court is whether the City violated Chapter 84 in passing Ordinance Numbers 210466 and 210468 (the “Ordinances”) after the Board adopted its budget for fiscal year 2021-22.

The Court finds that the City violated Chapter 84 in passing and implementing the Ordinances and that the Ordinances specifically violate Chapter 84 in that:

- (1) The Ordinances changed the “authorized expenditures” of the Board through a process not set forth in Chapter 84, *see* RSMo. § 84.740;
- (2) The Ordinances changed the “character classifications” of the Board’s budget without the Board’s consent, *see* RSMo. § 84.740;

- (3) The Ordinances “appropriate[d] and disburse[d]” money in a manner not “directed” by Chapter 84, *see* RSMo. § 84.770; and,
- (4) The Ordinances interfere with the Board’s “exclusive management and control” of the Kansas City Police Department. *See Spink*, 283 S.W.2d at 522.

The Court further finds that, once the Board adopts its budget for a given fiscal year under RSMo. § 84.740, the adopted budget is subject to specific provisions of Chapter 84, including that it “shall be the authorization of expenditures for the purposes set for therein” and “[n]o transfer from one character classification of expenditure in the board budget to another character classification shall be made without the approval of said board.” “Shall” is compulsory; thus, the City’s obligation to fund such expenditures after the Board adopts its budget is a ministerial act, not a discretionary act. The Court further finds that, although a city might retain the general power to revisit appropriations, such general power is limited by the specific restriction in Section 84.770 that the City shall appropriate and disburse funds as set forth in Chapter 84 and not otherwise.

There is no evidence that the City’s passage of Ordinances 210466 and 210468 was in response to a particular financial crisis experienced by the City that arose after the Board approved the KCPD budget on April 27, 2021. To the contrary, placing the \$45,282,444 in a fund for community engagement services under the requisitioning authority of the City Manager after the Board approved the KCPD budget on April 27, 2021, is an attempt by the City to exert management and control of KCPD as prohibited by Chapter 84.

The Court finds that the Board’s and the City’s prior course of dealing (that is, the execution of prior contracts or increases or decreases in funding that the Board thereafter approved) does not permit the City’s conduct here, which the Board did not approve and has specifically rejected through its filing of this original proceeding in mandamus. The Court further finds that

the Board's and the City's prior course of dealing is irrelevant to the parties' statutory duties and obligations under Chapter 84 and the question of whether Chapter 84 was violated here. The City cites no binding authority to the contrary.

The Court further finds that the Board's alternative count for declaratory relief does not defeat its request for a writ of mandamus. *See* Rule 55.10 ("A party may set forth two or more statements of a claim or defense alternately or hypothetically . . ."). The Missouri Court of Appeals has affirmed a writ of mandamus despite a plaintiff seeking both a writ of mandamus and declaratory relief. *See Vescovo*, 589 S.W.3d at 575 (explaining that plaintiff "sought a writ of mandamus, declaratory relief, and attorney's fees"). Moreover, as noted above, the Missouri Supreme Court has affirmed a permanent writ of mandamus sought by the Board against similar defendants and relators for violations of Chapter 84. *See Kemp*, 283 S.W.2d at 507.

Finally, the City argues that any funding provided to the Board in excess of one-fifth of general revenues of the City is entirely discretionary and not subject to a writ of mandamus. RSMo. § 84.730 provides in part that "in no event shall the governing body of the cities be required to appropriate for the use of the police board in any fiscal year an amount in excess of one-fifth of the general revenue fund of such year." Indeed this statutory provision grants the City an opportunity to exercise discretion and not appropriate funds for KCPD "in excess of one-fifth of the general revenue fund". However, the Court finds this discretion must be exercised during the appropriations phase. Once appropriated by the City, all appropriations provided in excess of one-fifth of the general revenue fund become mandatory upon the Board adopting and certifying the KCPD budget. Consistent with RSMo. § 84.730, this Court has *not* required the City to *appropriate* a sum in excess of one-fifth of the general revenue fund. However, once appropriated voluntarily by the City and adopted and certified by the Board, Section 84.740 provides that the

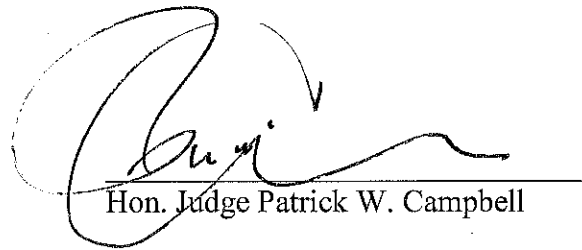
appropriations in excess of one-fifth of general revenue funds are no longer discretionary and “shall be the authorization of expenditures for the purposes set forth therein”. Therefore, a writ of mandamus remains an appropriate remedy.

Relief Ordered

Based on the Court’s findings of fact and conclusions of law, it is hereby ORDERED that a permanent writ in mandamus shall issue forthwith, directing that: respondents and defendants shall return to the Board’s requisitioning authority the \$42,282,444 originally appropriated to the Board and included in the Board’s approved fiscal year 2021-22 budget.

IT IS SO ORDERED.

Dated: October 5, 2021.



Hon. Judge Patrick W. Campbell